INDEX

Actus reus
intent and 381 et seq
mistake and 301, 308
Administrative law
natural justice and 517 et seq
proportionality in English 237–64
application in England, suggested 249 et seq
Bill of Rights affecting, lack of 259–60
cases, English, application to 249 et seq
conceptual and structural problems 254–64
constitutional law, influence of 257 et seq
institutional framework in France 245–7
French system and, an outline of 239–47
interpretation and application of in France 247 et seq
Parliament, questioning supremacy of 257
theoretical framework constraints of 256–64
'unreasonableness' and 254–6
public law and democracy 404–18
Apportionment of loss *see* Common law, Solomonic justice and Tort apportionment of loss
Assaults, reckless, after *Savage* and *Parmenter* 578–85
alternative verdicts 581
foreseeability and 580, 582
intent and 581–2
Australia
causation in *see* Tort, causation in Australia

Bentham, J.
moral rights, on 162 et seq
Blackstone
duelling, on 420 et seq
Braithwaite
sentencing, desert-based on 84 et seq

Capital offences, right to legal representation in 284–94
approach to in Commonwealth Caribbean 286–7
Caribbean, Commonwealth, inadequate and unavailable in 294–6
European Court of Human Rights on legal representation 291–3
United Nations Human Rights Committee's approach to 288–91
Caribbean, Commonwealth, capital offence cases, right to legal representation in 284–94
approach to in courts, including JCPC 286–7
inadequate and unavailable representation 284–6
Common law, Solomonic justice and 480–506
bipolar and polycentric issues 492–6
logical and conceptual issues 482–6
situations possibly suitable for 490–2
winner-take-all aspect 486–90, 486–506
arbitration 489–90
authority of law and 505–6
commutative and distributive justice and 498 et seq
moral luck, tie-breaking and distributive justice 500–4
precedent, role of 504–5
reasons for 496–506
statutory tribunals 490
utility of 497
Company law
flotations in the 1870's and postal rules in contract 184–9
secured transactions *see* Trusts, *Quistclose* secured transactions and
Comparative law
English and French administrative law, proportionality and 238 et seq
Constitutional law
administrative law, influence on 257 et seq
Bill of Rights and 259–61
Parliament, supremacy of 257
political freedom in Britain and the United States 362–79
checks and balances 374–5
citizen's values and 363–4
constitutional organization and 370–5
constitutional politics and 375–9
democracy, elite theory of 364–5
Dicey, A. V.—views on constitutional traditions and institutions 365–6
elite tolerance and 364–5, 375–7
flag burning and the First Amendment in the US 378–9

foundations of, theories on 363–7
Hand, Judge Learned on 364
judicial activism and 371–4
Madisonian prescription for constitutional organization and 366–7
political culture and 368–70
separation of powers 371
Sunday Times and *Malone* cases and, the 377
theories on, evaluation of 367–75
tolerance levels among general public 369–70, 376
written rights and 371
public law and democracy 404–18
rebel and, rights to 158 et seq
Contract law
economic loss and 559 et seq
negotiate, the contract to 586–9
postal rules in, a deconstruction of 170–94
acceptance cases in 1840s and 1870s 172–5
Adams v *Lindsell* 170 et seq
alternative explanations for decisions 176–84
company flotations and the 1870's decisions 184–9
decisions and their reasoning 170 et seq
delivery, posting identified with 180 et seq
electronic data interchange (EDI) and 193–4
fax technology and 192 et seq
postal reforms, 1840's decisions and 178–84
revocation cases, the 175–6, 189–92
telephone and, invention of 189 et seq
Trollope's *The Eustace Diamonds*, in 181–4, 189
Cork Committee, the 336, 354
Criminal law
assaults, *see* Assaults, reckless after *Savage* and *Parmenter*
capital offences *see* Capital offences
mistake as a defence *see* Defence, mistake as a
recklessness, subjective 45–58, 380–81
see also Assaults, reckless after *Savage* and *Parmenter*
aggravated 388–91
alternative, intents in the 385–8
driving, reckless, examples of 54
Duff, A. on 46 et seq, 381 et seq
intent, culpability and 380–91
mental elements as to consequences and circumstances 381–5
murder, intent and 390–1
objectivism and limits of 45–58
rape, in 50–2, 296 et seq, 381 et seq
subjectivist account, the traditional 46–8
Williams, Prof G., on 381 et seq
sentencing, desert-based *see* Sentencing, 'proportionalist' or desert-based
Critical Legal Studies
contemporary, from criticism to construction 507–42
autonomy of law, problems of 520–31
comparison of methods 518–20
Constitutive Theory of Law, in the US 524–6
deconstruction in the US 512–15
deviationist doctrine is US, strategy for reconstruction, as 531–4
evaluation of the Theories 530–1
immanent critique—the European Theory 515–18
methods of criticism 512–20
Neo-Evolutionary Theory of Law in Europe 526–30
Pashukanis, E., views of 521 et seq
prospects for US Theory 539–42
reconstructing law, strategy for 531–9
reflexive law, European strategy for reconstruction 535–9
society, relationship of law to 520–31
theory of 507–12
Teubner, G., and 526 et seq, 535 et seq
US compared with European 507 et seq
English, prospective histories 195–236
fates and futures of 232–6
Fraunce, A., and 218–9
imaginary laws and 219–32
national characteristics and 203 et seq
Wiseman, Sir Robert, and 206 et seq

Defence, mistake as a 295–310
alteration, desireability of an 305–9
different effects of a mistake until 1976 295–8
errors, modern 299–309
inconsistency of *Beckford* with *Morgan* 300
mens rea, denying 296

piecemeal approach, a 305
rape cases in 50–2, 294 et seq
self-defence to murder and, post 1976 298–9
'unlawfulness', inclusion of 300–4
Dicey, A. V.
administrative law, views on 410–11
constitutional traditions and institutions, views on 365–6
Discrimination
nationality, on grounds of 469–70
racial, USA, in 129 et seq
sex, ECC law and 467 et seq, 476–7
Duel, the, the English law of homicide and *see* Homicide, duel and the English law of, the
Duff, A.
criminal law, mental element in 46 et seq

Economic loss, liability for *see* Tort, economic loss, liability for
EEC law
establishment, freedom of 463 et seq
federalization of and direct effect 453–79
directives 472–8
enforcement function, direct effect and 458–63
enforcement function, expansion of 460–3
legislation: enforcement and monitoring functions 470–8
legislative function and direct effect, the 463–70
public enforcement, limits of 454–8
regulations 470–1
Van Gend en Loos, reasoning in 458 et seq
labelling directives and 475
nationality, discrimination grounds of 469–70
products liability 472–3
sex discrimination 467 et seq, 476–7
'1992', influence of on legal scholarship 99–111
history 99–103
law publishing, effect on 103–111
Employment law *see* Labour law
Establishment, freedom of EEC law and 463 et seq
Europe *see also* EEC Law; European Court of Justice
Critical Legal Studies in *see* Critical Legal Studies
European Convention on Human Rights
Art 6, fair hearings 291–2
European Court of Human Rights
legal representation, approach to 291–3
European Court of Justice *see also* EEC law
direct effect cases and 453 et seq
establishment, freedom of, on 463 et seq
labelling directives, on 475
nationality, discrimination on grounds of 469–70
sex discrimination, on 467 et seq, 476–7
Treaty of Rome, interpretation of 453 et seq
Evidence
expert, law, practice and probability and 392–403
DNA testing and 395 et seq

Federalization, EEC law and *see* EEC law, federalization of and direct effect
France
administrative law in, proportionality and 238 et seq
Fraunce, A.
English law, critical analysis of 218–19
Freedom, political *see* Constitutional law, political freedom in Britain and the United States
Frey, R. G.
moral rights, on 151 et seq

Hand, Judge Learned
political freedom, on 364
Homicide
duel and the English law of, the 419–30
Blackstone on 420 et seq
duellists as murderers? 427–30
murder, chance medley manslaughter and 419–27
intent, murder and 390–1
Housing law *see* Property law, housing and rent control
Human rights
Commonwealth Caribbean, in 284 et seq
European Convention on *see* European Convention on Human Rights
European Court of *see* European Court of Human Rights
legal representation, to 284–94
United Nations Committee on *see* United Nations Committee on Human Rights

Insolvency law
Cork Committee, the 336, 354
secured transactions *see* Trusts, *Quistclose*, secured transactions and
International Covenant on Civil and Political Rights
Art 14 288–9
International law
Capital offences, right to legal representation in 284–94
approach to in Commonwealth Caribbean 286–7
European Court of Human Rights on legal representation 291–3
inadequate and unavailable representation in the Commonwealth Caribbean 284–6
United Nations Human Rights Committee's approach to 288–91
international corporations in
English courts 135–48
foreign corporations, recognition as 142–4
implications of recent legislation 144–8
non-recognition 141–2
recognition 136–41

Kant, I.
antimonies, jurisprudential, on 314
Kelsen, H.
General Theory of Norms, review of 268–70
Law, Pure Theory of,
neo-Kantian dimension of 311–32
antimony, the jurisprudential 313–22
criticism of others 315–18
mistaken interpretation of scheme 320–22
morality and separability theses 318–19
reductive and normativity theses 319–20
'Regressive' or neo-Kantian argument 322–32
transcendentals 323–32
Kennedy, D.
Critical Legal Studies and 524 et seq, 533, 539 et seq

Labour law
rights, new, Thatcher ideology and 24–44
Commissioner for the Rights of Trade Union Members 38
critique of, a 30–5
democracy and 25–35
Dock Labour Scheme, abolition of 36
elections, trade union, on 27
freedom and, concept of 38–9
implications of 39–44
industrial action, on 27 et seq
laissez-faire and 39 et seq
legislation, the 26 et seq
political funds, on 28
trade union immunities and 25 et seq
Wages Councils, restriction of 38
Landlord and tenant law *see* Property law, housing and rent control
Legal theory
criminal law, recklessness and *see* Criminal law, recklessness, subjectivism, objectivism and limits of
Critical Legal Studies *see* Critical Legal Studies
distributive justice *see* Common law, Solomonic justice and
Kelsen, H., *General Theory of Norms*, review of 265–74
Kelsen, H., pure theory of law *see* Kelsen, H., law, pure theory of, neo-Kantian dimension of
moral theory, aims and authority of *see* Moral theory, aims and authority of
moral rights, defence of *see* Moral theory, moral rights, defence of
public law and democracy *see* Public law, democracy and
Lijphart, A.
democracy, on 411–12

Madison, J.
political freedom, constitutional organization and, views on 366–7
Mens rea
assault, for 581 et seq
mistakes which deny 296, 301
recklessness and intent 38 et seq
Mistakes in Defence *see* Defence, mistake as a
Moral theory
aims of authority of 1–23
moral rights, in defence of 149–69
Bentham, J. on 162 et seq
conventional rights 161 et seq
duties and 154 et seq
legal rights and 156 et seq
model of legal rules and 166 et seq

rebel, rights to 158 et seq
Ryle, G., on 166–7
Sumner, L. W., on 163 et seq
terminology 149 et seq
necessity of theory and 18 et seq
philosophical and moral enquiry into 4 et seq
Rawls, J., on 2 et seq
reflective equilibrium and 2 et seq
utilitarianism and 7 et seq
Walzer, M., on 1 et seq
Williams, B., on 1 et seq
Morris, N.
sentencing, on 89
Murder *see* Homicide

Natural justice 517 et seq
Negligence,
contributory 482, 485–6, 488
Nervous shock, liability for *see* Tort, psychiatric illness, liability for after Hillsborough

Pashukanis, E.
law and society, on 521 et seq
Pettit
sentencing, desert-based, on 84 et seq
Pharmaceutical products in the UK and USA, liability for 59–82
informed consent and 68–72
learned intermediary rule 66 et seq
critique of 78–81
exceptions to in the USA 72–6
vaccines, contraceptives and English law 76–8
negligence and 67
strict liability in the USA 64 et seq
warnings, provision of 59–66
Property law
assured tenancies 543 et seq
housing and rent control 543–57
alternative view, an 555–6
fixed rent mechanisms 551
framework, the traditional theoretical 544–7
landlord, nature of 552–3
modifications to the traditional view 547–53
options, other 553–5
quality of housing and 550–1
rent control, meaning of 547–50
security of tenure 551–2
USA housing shortages and 553–4
notices, postal rules and the serving of 191, 192
Public law *see also* Administrative law; Constitutional law
democracy and 404–18
Dicey, A. V. and 410–11
Lijphart, A., on 411–13
pluralism and 414–16
positivism, legal and 407–9
reform and, constitutional 413–14
methodological considerations 569–71
public lawyers' role, ambit of 564–9
substantive considerations 571–5

Racial discrimination *see* Discrimination, racial
Rape, mistake in *see* Criminal law, recklessness, subjectivism, objectivism and the limits of, rape, mistake in; Defence mistake as a, rape cases in
Rawls, J.
moral theory, on 2 et seq
Recklessness, subjective *see* Criminal law, recklessness subjective
Rent control *see* Property law, housing and rent control
Royal Commission on Civil Liability and Compensation for Personal Injury 76
Ryle, G.
moral theory, on 166–7

Sentencing, 'proportionalist' or desert-based 83–98
blameworthiness, ignoring 88–90
Braithwaite and Pettit on 84 et seq
censure and desert 92–5
decremental strategy, the 91–2
'dominion' and 87
prediction, reliance on 90–1
role of desert, question of 95–8
upper limits, question of 88
Sex Discrimination *see* Discrimination, sex, EEC law and
Social legislation, the economic impact of *see* Property law, housing and rent control
Story, R.
rebel, on right to 158
Sumner, L. W.
moral rights, on 163 et seq

Teubner, G.
Neo-Evolutionary Theory of Law 526 et seq
reflexive law, thesis of 535 et seq
Title, transfer of 493 et seq
Tort
apportionment of loss 482 et seq
causation in Australia 431–9
'but for' rule 434 et seq

common sense, application of 436 et seq
economic loss, liability for 112–28, 558–63
Anns, liability under 114–16
common law developments 123–4
consumer protection and 118–28
defective buildings after, *Murphy* 112–28
Dutton, liability under 113–14
failures to establish in the past 113–17
Junior Books, builders' liability and 116–17
necessary developments 128
pharmaceutical products, liability for *see* Pharmaceutical products, liability for
psychiatric illness, liability for
after Hillsborough 440–52
communication of shock, mode of 446–7
Hillsborough litigation, the 443 et seq
immediacy, need for 446
proximity of relationship 445–6
sudden and gradual assaults on nervous system 447–51
Trade unions *see also* Labour law
Commissioner for the Rights of Trade Union Members 38
elections 27
industrial action and 27 et seq
legislation, on, new 27 et seq
new rights and, Thatcher ideology on 25 et seq
postal ballots and 27, 29
Trollope, A.
postal rules of contract and 170 et seq
Trusts
Quistclose, secured transactions and 333–61
cases prior to 347–50
charges, registration of 360–1
conduct, drawing inferences from 358–60
facts of 351–2
modern case law 351–4
priorities 342–5
security, legal sanctions for 340–2
'security', meaning of 334–6
security, reason for taking 336–9
undertakings by payee 354–7
textbooks on 275–83

Unger, R. M.
Critical Legal Studies and 513, 519, 531 et seq, 539 et seq
United Kingdom
administrative law, proportionality in compared with French, *see* Administrative law, proportionality in English
pharmaceutical products in, liability for *see* Pharmaceutical products, liability for
political freedom in *see* Constitutional law, political freedom in Britain and the United States
United Nations Commitee on Human Rights 284 et seq
legal representation, approach to 288–91
United States of America
civil rights, restriction of 129–34
Atonio case, reasoning in and implications of 131–4
background 129–31
Critical Legal Studies in, *see* Critical Legal Studies, contemporary, from criticism to construction
housing shortages in 553–4
pharmaceutical products in liability for 59 et seq
political freedom in *see* Constitutional law, political freedom in Britain and the United States
racial discrimination in 129 et seq
sentencing in, desert-based 83–98

Walzer, M.
moral theory, on 1 et seq
Williams, B.
moral theory, on 1 et seq
Williams, Prof G.
recklessness and intent, on 381 et seq
Wiseman, Sir Robert
common law, critique of 207 et seq